

Appl. No. 10/009,990
Response Dated August 25, 2008
Reply to Office Action of May 28, 2008

REMARKS/ARGUMENTS

Claims 9-11 are pending in the above-captioned application.

The following remarks are believed to be fully responsive to the Office Action.

35 U.S.C. §103 rejection

Claims 9-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Jaeger U.S. Patent No. 5,297,502 (“Jaeger”) in view of Levy U.S. Patent No.: 4,332,244 (“Levy”).

Applicants are well aware of both Jaeger and Levy. Applicants disclosed Jaeger and Levy in their original U.S. application filing on June 8, 2000.

Accordingly, Applicants respectfully submit that it is impermissible within the framework of 35 U.S.C. §103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443 (Fed. Cir. 1986). (emphasis added).

Jaeger specifically relates to an inhalation system for supplying gas directly to the respiratory tract of a plurality of experimental animals.

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Levy relates to an anesthesia mask for laboratory animals comprising a supply tube having a generally conical mask at one end into which the animal's snout is inserted.

The present invention, however, specifically relates to anaesthetizing animals via a ventilation system for use in a surgery suite.

Unlike Jaeger, the current ventilation system was modified in order to allow it to be used on small animals such as rats. As disclosed in the present invention, volatile liquid anaesthetic must be vaporized using a vaporizer prior to its use with humans or animals as an anaesthetic. However, prior art anaesthetic systems using vaporizers are designed for use with humans or large animals. Accordingly, a part of the novelty of the present invention's system was that it is modified to accommodate smaller animals. (See page 2 and tables 1-3 of the specification).

Jaeger does not teach, disclose, or suggest using its invention for anesthetic purposes and further more its system, unlike the present invention, does not account for the required modifications necessary for use in animals that require a volatile liquid anaesthetic to be vaporized. It is well settled in case law that prior patents are references only for what they clearly disclose or suggest. Additionally, it is not proper use of a patent as a reference to modify its structure to one which prior art references do not suggest. *In re Randol and Redford*, 425 F.2d 1268, 165 U.S.P.Q. 586, 588 (C.C.P.A. 1970). A reference must be considered not just for what it expressly teaches, but also for what it fairly suggests to one who is unaware of the claimed invention. *In re Baird*, 16 F.3d 380, (Fed. Cir. 1994).

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On page 9 of the present invention's specification, Applicants also presents the schematic differences between the prior art systems versus the present ventilation system.

Figure 1 depicts a prior art system similar to Jaeger.

Furthermore, unlike the present invention, Levy uses only masks for delivering anesthetic gases to a laboratory animal. Moreover, unlike the present invention, Levy does not teach, suggest, or disclose using breathing station compartments that would fill a chamber compartment with anesthetic without the use of masks to deliver anesthetic gases to laboratory animals. Therefore, unlike the present invention, Levy is unable to administer liquid anaesthetic to the laboratory animals. Nor is Levy able to deliver precise amounts of gas anesthetics like the present invention.

In view of the foregoing, it is therefore respectfully submitted that 35 U.S.C. 103(a) rejections of claims 9-11 be withdrawn and that claims 9-11 be allowed.

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CONCLUSION

In view of the amendments and remarks herein, Applicants believe that each ground for rejection made in the instant application has been successfully overcome, and that all the pending claims 9-11 are in condition for allowance. Withdrawal of the Examiner's rejections and objections, and allowance of the current application are respectfully requested.

The Examiner is invited to telephone the undersigned in order to resolve any issues that might arise and to promote the efficient examination of the current application.

Respectfully submitted,

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